

Practical Implications of the Pandemic: Effect on Workers Compensation Practices Going Forward

ALJ focus—1) Make a good record—court of first impression, clear, concise record for appeals. 2) Let parties/witnesses see what's involved, who's involved, feel involved.

Make a good record—open court best, 360 body language, interjecting easiest, everybody looks at exhibits together.

Personal involvement—open court provides some level of formality which may either please or intimidate witness and thereby helps impression of veracity.

Drawbacks to open court—1) travel for witnesses, attorneys, court reporters—time, traffic, directions, weather can interfere.

Pandemic has shown open court option may be withdrawn at any time. Need workable options.

- 1) Conference calls—advantages: no need for internet access, no travel required. Disadvantages: lag time from voice to voice, difficult to politely interject, sometimes difficult to tell who is talking, difficult to “triage,” and allow testimony.
- 2) Zoom, et.al.—advantages: some visual of witnesses and attorneys, easier to politely interject, highlight bar for who is talking. Disadvantages: Freezing/skipping, occasionally just not working. Audio/visual internet access required, lack thereof requiring witness to travel. No joint visual of exhibits.
- 3) Better option?—open court with six foot distancing. Requirements: 1) Cut down size of tables, number of chairs, bench area. 2) Limit number of people--parties may have to sit out when others testifying.

Important Considerations for Workers Compensation Hearings

1. Participants must be flexible. It should be apparent to everyone by now that the constantly evolving COVID-19 pandemic can cause changes to how hearings are conducted with very little notice. Attorneys and litigants have to be flexible and able to adapt to those changes, including the format of hearings, how testimony is taken, etc.
2. More than ever, when hearings are being conducted remotely, parties must be prepared and communicate with one another before the hearing. Unlike during in-person hearings where attorneys are given an opportunity to speak outside the courtroom before the hearing begins, remote hearings require everyone to be ready to begin the hearing as soon as the ALJ begins the hearing.
3. Parties need to keep the Court and one another informed of any special circumstances that might be impacted by alternative hearing procedures, i.e. the need for an interpreter or multiple witnesses, so that the Court and the parties can be best prepared to ensure the hearing goes smoothly.
4. When attending hearings by telephone or over Zoom, remember that the environment from which you attend the hearing impacts the hearing. Making an accurate record is of the utmost importance, and the court reporter needs to be able to hear everything that is being said. Make sure you are in a quiet location, and if there are going to be loud noises or people talking, close your door and if necessary, take your phone off speaker phone. Attending a hearing over Bluetooth speaker phone in your car while driving down the highway creates a great deal of road noise that the court reporter, parties, and ALJ have to contend with in order to hear everyone speak.
5. Make sure your clients are prepared for the alternative hearing format. If the hearing is going to be by Zoom, don't just forward the link to your client and assume that they will know what to do. Make sure they understand how Zoom works and how to access it. Similarly, if the hearing is by phone, make sure your client knows that they need to be in a quiet location where they can be clearly heard.
6. There are ten different ALJ's in the state, and everyone does things a little differently. If there is a question as to what format a hearing is going to take or you would prefer the hearing be conducted in a particular format, contact the ALJ's legal assistant and ask. With some people working remotely, it is not surprising for people to have questions. Don't be afraid to ask them.
7. Be patient with one another and the Court. This is not an ideal situation, and everyone is facing challenges as a result of the changing landscape of the

pandemic. Patience can go a long ways to make these challenges more manageable.